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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of
Computation of Rates
for Attachment of
Cable Television Hardware
to Utility Poles

) CS 97-98
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) AAD-94-125
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MAR 10 1997

TO: The Commission

REPLY COMMENTS OF
SOUTHWESTERN BELL TELEPHONE COMPANY

Southwestern Bell Telephone Company (SWBT), by its attorneys and pursuant to the Commission's November 14, 1994 Public Notice¹ respectfully submits its response to the letter (the "CATV Letter") submitted in response to SWBT's Petition in the above-captioned matter by the Texas Cable TV Association, the Arkansas Cable Television Association, the Kansas Cable Television Association, the Missouri Cable Telecommunications Association and the Cable Television Operators of Oklahoma, Inc. (the "CATV Associations").²

The CATV Letter challenges SWBT's Petition on two grounds: (1) the accounting principles underlying the Petition and (2) an emotionally charged claim that the Petition reflects an anticompetitive approach.³ While SWBT vehemently denies this

¹ DA 94-1232.

² The CATV Associations originally submitted the CATV Letter in response to the Petition on October 13, 1994.

³ Many of the matters raised in the CATV Letter are also the subject of a formal complaint filed by the CATV Associations on December 16, 1994 pursuant to Sections 1.1401 et seq. of the Commission's Rules, and thus, those details which need not be

personal attack on SWBT, SWBT does not otherwise address it because SWBT does not believe that an unfounded claim of anticompetitive behavior is the proper basis for determining whether the formula results in a rate approximating the maximum rate allowed by the Pole Attachment Act (PAA).⁴ Accounting principles alone should determine how to clarify the formula in a manner consistent with the PAA.

The CATV Letter is unclear and confusing. While the CATV Letter admits there is a problem with the formula, it does not address the main point of SWBT's Petition, that is, the imbalance in the portion of the formula that determines the net pole cost. Instead, the CATV Associations attempt to confuse the issue by questioning the Commission's depreciation prescription process, claiming that SWBT has already overrecovered its pole investment and contending that SWBT is not entitled to recover pole removal costs as part of the depreciation expense.

The CATV Associations' entire position is based upon the faulty assumption that the Commission's depreciation rates and pole attachment formula should not permit a recovery associated with the

addressed for purposes of SWBT's Petition, will be addressed, as appropriate, in the context of such complaint.

⁴ 47 U.S.C. § 224. Apparently, counsel for the CATV Associations customarily uses general accusations of anticompetitive behavior as a means of persuading the Commission that "abuse of . . . monopoly control over poles. . . is typical of telephone company behavior towards cable operators" which somehow justifies a punitive rate below the maximum rate allowed by the PAA. Petition to Deny and Request for Emergency Stay of Jones Spacelink of Hawaii, Inc. filed in In the Matter of GTE Hawaiian Telephone Company, Inc. W-P-C-6958 at p. 11 (October 24, 1994).

cost of removal of poles. For example, the CATV Associations state as follows:

[SWBT's] own books demonstrate that by recovering pole removal expenses which are anticipated but not realized because of long delay in actual pole retirements, it has more than recovered [its pole] investment."⁵

This statement is wrong and assumes that SWBT is not entitled to recover pole removal expenses as part of the depreciation rates prescribed by the Commission. On the contrary, as recently as October 1993, in the Depreciation Simplification Order, the Commission confirmed that future net salvage would continue to be part of the depreciation prescription process.⁶ Thus, as part of the existing Commission-prescribed depreciation rates, SWBT is entitled to recover not only the investment but also the cost of removal of the poles.⁷

SWBT denies that it has overrecovered its investment, as alleged by the CATV Associations. In fact, as stated in its Petition, SWBT has not even recovered one-third of its existing pole investment. Besides, SWBT is also entitled to recover the cost of removal as part of the depreciation expense included in the formula.

⁵ CATV Letter at p. 2 (emphasis in original).

⁶ In the Matter of Simplification of the Depreciation Prescription Process, Report and Order, CC Docket No. 92-296, 8 FCC Rcd 8025, 8065 ¶ 99 (1993) (Depreciation Simplification Order).

⁷ Any suggestion that SWBT should not recover removal costs amounts to a recommendation to create a depreciation reserve deficiency or to pass the entire cost of removal on to ratepayers or shareholders, contrary to the PAA.

Although the CATV Associations' arguments are unclear and confusing, they appear to take the position that the formula should result in a negative net pole cost even though SWBT has not recovered much of its pole investment. The CATV Associations' arguments fail to address the fact that future net salvage is included in the depreciation reserve, but not in the gross pole investment component of the formula.

The removal of future net salvage from the depreciation reserve does not inflate the net cost of a bare pole -- i.e., it does not create a "phantom asset," as the CATV Associations allege -- rather, it corrects an imbalance in the formula which has previously created an artificially low net pole cost. SWBT is not seeking to recover the amount it has foregone in previous years due to the artificially depressed net pole cost. However, SWBT maintains that it is entitled to charge pole attachment rates based upon a corrected net pole cost from now on.⁸

Not only do the CATV Associations appear to believe that the net pole cost should turn negative long before SWBT has recovered its investment (and without recovering any of the cost of removal), the CATV Associations somehow reach the incorrect conclusion that SWBT has charged too much in the past. For example, the CATV Associations refer to the "past overcharges" and "present overcharges." This is simply untrue. The Commission

⁸ U S WEST Communications, Inc. (U S WEST) points out in its comments in support of SWBT's Petition that it has experienced similar negative net pole costs in five of its states. U S WEST notes that it also has not recovered its pole investment in these five states. U S WEST Comments at n. 5.

reviews SWBT's depreciation rates and prescribes the basic factors used to compute them. In contending that SWBT's correction to the formula follows after an overrecovery through "high depreciation costs," the CATV Associations are questioning the Commission's depreciation prescription process. If they genuinely believed this was the case, the CATV Associations should have addressed this issue with the Commission in connection with the recent review of the depreciation prescription process. SWBT believes the Commission's depreciation prescription process has been very thorough. Similarly faulty are the CATV Letter's statements concerning the rate of retirement of poles. If SWBT's retirements of an asset are too slow, then the Commission will prescribe a longer life. The Commission's depreciation prescription process was designed to assure that depreciation rates do not overcharge ratepayers, and the pole attachment formula uses the same depreciation rate to calculate the depreciation expense that LECs are allowed to charge cable operators.

While changes in the rate of retirements and increases in cost of removal will affect the depreciation expense, SWBT's proposed solution would avoid a distorting effect on the computation of the net pole cost. In other words, future increases in the cost of removal will not affect the net pole cost because the depreciation reserve component will no longer contain a future net salvage component.⁹ However, SWBT will continue to recover

⁹ An alternative method of correcting the imbalance in the formula, which was considered by SWBT, but not proposed in the Petition, would be to adjust the gross pole investment to include

cost of removal as part of the Commission's prescribed depreciation rate which determines the depreciation expense that is included in the pole attachment rate.

If the CATV Associations' confusing objections to the Petition are intended as a complaint that future net salvage should have been removed from the depreciation reserve in previous years, they should have approached the Commission with that concern previously. SWBT does not agree that including future net salvage in the formula could have resulted in an excessive rate in previous years because the high cost of removal has increased the depreciation reserve, which has previously reduced the net pole cost. In any event, SWBT's Petition was only intended to request a clarification of the formula on an ongoing basis, not a re-examination of rates charged in prior years.

The CATV Associations' three problems concerning Exhibit 1 to the CATV Letter also attempt to confuse the main issue presented in SWBT's Petition. SWBT is unable to substantiate the numbers contained in Exhibit 1 and the CATV Letter does not explain them. The three problems are not evident to SWBT based on Exhibit 1 or otherwise. The first and second problems raised by the CATV Associations in reference to Exhibit 1 are based upon the same faulty assumption that SWBT is recovering a return on a "phantom asset" which it is not entitled to recover. Contrary to the CATV Letter's assumption, SWBT does not admit that the "rate base has been inflated by a phantom asset." In fact, the situation is

the negative future net salvage that SWBT is entitled to recover.

exactly the opposite: the inclusion of future net salvage in the depreciation reserve has reduced the net pole cost rather than inflating it. The third problem cannot possibly exist because SWBT has not admitted, nor has the Commission determined, that SWBT's "book depreciation is incorrect."

Because the CATV Associations' assumptions are faulty, it has proposed a ludicrous solution that produces a rate of 18 cents per pole compared to rates that are typically in the range of \$3.00 to \$6.00 per pole. The CATV Associations' proposed solution assumes that SWBT has fully recovered its pole investment, which is not true. Therefore, there is indeed a "rate base," on which cost recovery can be calculated, and thus it is inappropriate and unnecessary for the Commission to consider possible solutions that would only apply after investment has been reduced to zero and removal costs have been recovered.

In conclusion, SWBT respectfully urges the Commission to ignore the inappropriate matters raised by the CATV Associations, to reject the CATV Associations' faulty and distracting arguments

and to grant SWBT the relief requested in its Petition, preferably by way of clarification, or in the alternative, by way of a waiver.

Respectfully submitted,

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December 30, 1994

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "Reply Comments of Southwestern Bell Telephone Company" in Docket No. AAD 94-125 has been filed this 30th day of December, 1994 to the Parties of Record.

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